

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

DANIEL J. GARDNER,

Plaintiff,

v.

SELENE FINANCE,

Defendant.

CIVIL ACTION FILE

NO. 1:15-CV-04110-CC-WEJ

FINAL REPORT AND RECOMMENDATION

Plaintiff, Daniel J. Gardner, filed the instant Verified Complaint [1-1] in the Superior Court of Fulton County on October 14, 2015. Defendant, Selene Finance, removed the matter to this Court on November 23, 2015. (Notice of Removal [1].)

Defendant then filed a Motion to Dismiss [4] the Verified Complaint as a whole. After observing that Mr. Gardner had not responded to the Motion to Dismiss, this Court entered an Order on January 4, 2016, requiring plaintiff to show cause why this case should not be dismissed and to do so within ten days of the date of the Order. (Show Cause Order [6].) Plaintiff was warned that his failure to respond to the Show Cause Order would result in this Court


recommending dismissal of this case. (Id.) Nevertheless, to date, Mr. Gardner has ignored the Show Cause Order and has failed to file a response in opposition to the Motion to Dismiss. Therefore, the Motion is deemed unopposed. N.D. Ga. R. 7.1.B.

When a plaintiff fails to respond to a motion to dismiss a complaint pursuant to Federal Rule of Civil Procedure 12(b), granting the motion based solely on the party's failure to respond is within the discretion of a district judge. See Magluta v. Samples, 162 F.3d 662, 664-65 (11th Cir. 1998). Additionally, the Court may dismiss a case for want of prosecution if a plaintiff refuses to obey a lawful Order of the Court. See Fed. R. Civ. P. 41(b); N.D. Ga. R. 41.3(A)(2) ("The court may, with or without notice to the parties, dismiss a civil case for want of prosecution if . . . [a] plaintiff . . . shall, after notice, fail or refuse to appear at the time and place fixed for pretrial or other hearing or trial in a case or fail or refuse to obey a lawful order of the court in the case.").

Because plaintiff has failed to respond to the pending Motion and refused to obey a lawful Order of the Court, this case may be dismissed for want of prosecution. Accordingly, the undersigned **RECOMMENDS** that the Motion to Dismiss [4] be **GRANTED** and the Verified Complaint be **DISMISSED**.

The Clerk is directed to terminate the reference to the undersigned Magistrate Judge.

SO RECOMMENDED, this 26th day of January, 2016.



WALTER E. JOHNSON
UNITED STATES MAGISTRATE JUDGE